



In the Court as set by Article 3 of the Constitution for the United States of America which court is set for:

**district court of the United States
FOR THE WESTERN DISTRICT OF NEW YORK**

Daniel J. Wik

Plaintiff,

v.

Donald R. Kunego,

**NOTICE OF
MOTION TO
COMPEL/SANCTION/
EXTENSION**

CASE NO: 6:11-cv-06205 CJS

Defendant:

PLEASE TAKE NOTICE, that upon the Affirmation of Daniel J. Wik, dated Octoberer 24, 2011, Plaintiff Daniel J. Wik will move this Court before Judge Charles J. Siragusa, for an Order to Compel defendant to provide documents requested, for Sanctions against Defendant, and an extension of all discovery related deadlines ordered by Hon. Jonathan W. Feldman pursuant to the Fed. R. Civ. P. Rule 16(b) and Local Rule 16.1(a) scheduling order (Document 9).

If the opposing party intends to file and serve reply papers, pursuant to Local Rule 7.1(c), the opposing party is therefore required to serve opposition papers at least eight business days prior to the return date.

October 24, 2011

Daniel J. Wik



Plaintiff without representation
in propria persona
c/o non-domestic
659 Averill Avenue
Rochester, New York 14607
(585)-957-5902

To: Robert H. Flynn
Lippman O'Connor
300 Olympic Towers
300 Pearl Street
Buffalo, New York 14202

In the Court as set by Article 3 of the Constitution for the United States of America which court is set for:

**district court of the United States
FOR THE WESTERN DISTRICT OF NEW YORK**

Daniel J. Wik

Plaintiff,

v.

Donald R. Kunego.

**AFFIRMATION IN
SUPPORT OF MOTION
TO COMPEL/SANCTION/
EXTENSION**

CASE NO:6:11-cv-06205-CJS

Defendant:

Daniel J. Wik respectfully presents and affirms the following under penalty of perjury, under the laws of the United States of America without the "United States" (federal government):

1. I submit this Affirmation in support of my Motion to Compel/Sanction/Extension due to Defendants failure to timely provide the documents requested pursuant to discovery. The information set forth in this Affirmation is based upon my personal knowledge and review of the proceedings in this action, and are true and correct to the best of my knowledge.
2. The terms "Plaintiff" and "Plaintiff's", as used in this action, when in specific relation to this action, are defined as a first person singular pronouns (like: I, me, mine, etc.), which pronouns always with regard to this action mean: Daniel J. Wik, the man, or his possessory interest.
3. On or about July 13, 2011 Daniel J. Wik and Robert H. Flynn participate in a conference pursuant to Fed. R. Civ. P. Rule 16(b) and Local Rule 16.1(a) before Hon. Jonathan W. Feldman.
4. On or about July 13, 2011 Hon. Jonathan W. Feldman issued a scheduling order (Document 9). A copy of said Order is attached to and made a part of this Affidavit and Memorandum of Law in Support of Motion to Compel/Sanction/Extension, as if fully set forth herein. under Exhibit "A".

5. On or about September 6, 2011 I served Defendant with a Request for Documents. A copy of said Request for Documents is attached to and made a part of this Affidavit in Support of Motion to Compel/Sanction/Extension, as if fully set forth herein, under Exhibit "B".
6. Said Request for Documents gave Defendant 20 days to respond.
7. Said request stated:

"YOU ARE REQUIRED, if you do not have one or more of the above, to submit a letter or affidavit so stating within (20) days of the service of this demand. IF YOU FAIL TO COMPLY, I shall pursue sanctions as provided by law."
8. Defendant has failed to timely serve Daniel J. Wik its response to the Request for Documents.
9. Defendant's failure to serve Daniel J. Wik its response to the Requested for Documents biases, prejudices, and denies due process to Daniel J. Wik and directly impairs his discovery process, and is adverse to judicial economy in the disposition of this matter.
10. Daniel J. Wik does not have representation in this matter.
11. Defendant has representation in this matter.
12. Defendant's attorney, Robert H. Flynn, is deemed to know the law and rules.
13. Daniel J. Wik is not an attorney but diligently endeavors to be respectful of the Court and works to meet deadlines and obey the rules.
14. Defendant's attorney, Robert H. Flynn, is highly trained in law, is aware of Court ordered deadlines, has been certified by the BAR, is aware of this Courts rules, and has received the Court scheduling order, yet fails to obey the rules and meet the deadlines ordered by the Court, and defendants actions make it improbable for Daniel J. Wik to meet discovery deadlines.
15. Defendant's failure to timely participate in discovery creates bias and prejudices Daniel J. Wik.

Relief

16. Daniel J. Wik requests that the Court impose sanctions that are authorized pursuant to Fed. R. Civ. P. Rule 37(b)(2) and Local Rule 11 against Donald Kunego by issuing an order that the:

- a. Court enter a default judgment against Defendant. or
Matters embraced in the Complaint be taken as established for the purpose of this
action, and;
Defendant be barred from supporting or opposing the designated claims or
defenses or from introducing designated matters in evidence; and
Defendant be barred from presenting any evidence regarding that information at
trial, and;
- b. Defendant reimburse Daniel J. Wik for lost time including but not limited to having
to file, serve, research, respond, and prosecuting this point, and;
- c. Defendant be compelled to provide a response to the Request for Documents
forthwith, and;
- d. Court extend the time for all further discovery deadlines, including but not limited
to the deadline to amend the complaint and add parties, to sixty (60) days after the
response to the Request for Documents are provided to Daniel J. Wik.
- e. And any other further relief the court finds just and proper.

Dated October 24, 2011
Rochester, New York
United States of America

Daniel J. Wik



Plaintiff without representation,
in propria persona
c/o non-domestic
659 Averill Avenue; near:
Rochester, New York
(585)-957-5902

Verification

New York State)
) solemnly affirming and subscribing
Monroe County)

I, Daniel J. Wik, Your Affiant, in my own proper natural self do solemnly affirming,
according to law that the contents herein are true, correct and complete, and I affirm and verify
that:

1. Your Affiant is over twenty-one years of age and is competent to testify.
2. Your Affiant has specific and personal knowledge of each of these events and of the
facts as noted in said Affirmation in Support of Motion to
Compel/Sanction/Extension.
3. The contents of this Affirmation in Support of Motion to Compel/Sanction/Extension
are true and correct to the best of Your Affiant's ability.

Respectfully Presented on October 24, 2011

Daniel J. Wik

Affirmed to before me this
24 day of October, 2011.

ROBERT W. COLWELL
Notary Public, State of New York
No. 01C06121092
Monroe County, New York
Commission Expires January 10, 20

Exhibit A

Exhibit A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

DANIEL J. WIK,

Plaintiff(s),
v.

SCHEDULING ORDER
11-CV-6205CJS

DONALD R. KUNEGO, in his personal
and individual capacity,

Defendant(s).

Pursuant to the order of the Hon. Charles J. Siragusa referring the above case to the undersigned for pretrial procedures and the entry of a scheduling order as provided in Fed. R. Civ. P. Rule 16(b) and Local Rule 16.1(a), and a conference having been held on **July 13, 2011** with counsel relative to the matter, it is ORDERED that:

1. All mandatory disclosure requirements found in Rule 26(a)(1) of the Federal Rules of Civil Procedure, as well as any objections to the mandatory disclosure requirements, shall be completed on or before **August 15, 2011**.

2. All motions to join other parties and to amend the pleadings shall be filed on or before **September 16, 2011**. Any third party action shall be commenced on or before **September 16, 2011**.

3. All factual discovery in this case, including depositions, shall be completed on or before **February 28, 2012**. All motions to compel discovery shall be filed at least thirty (30) days prior to the factual discovery cutoff.

4. Dispositive motions, if any, shall be filed no later than **April 13, 2012**. Unless a consent to proceed before this Court has been filed, such motions shall be made returnable before Judge Siragusa. **NOTE: If the dispositive motion is filed against a party who is appearing in this action pro se, the moving party must include the advisement set forth in the notice attached to this Order.**

5. A trial date status conference pursuant to Fed. R. Civ. P. Rule 16(d) and Local Rule 16.1(j) will be held, if necessary, at a date and time to be determined by the trial judge after determination of dispositive motions. If no dispositive motions are filed, counsel shall immediately contact the trial judge so that a trial date status conference can be scheduled.

At least seven (7) days prior to the trial date status conference, the parties shall file a joint case status report setting forth the information described below. If the parties disagree as to the information to be provided, the report must set forth their different responses. The joint status report shall contain:

- (1) Nature of the Case: Set forth a brief description of the action, identifying the parties, all counsel of record, the relief requested, any affirmative defenses and any relationship the case may have to other pending actions.
- (2) Motion Practice: Are any motions, dispositive or non-

dispositive, pending? If so, briefly describe the motion. Explain if additional motion practice is necessary before the matter is ready to be tried.

(3) Settlement: Describe the status of settlement negotiations. If the parties believe a court supervised settlement/mediation conference would be of assistance in resolving the case or narrowing disputed issues, please state.

(4) Trial: State whether the case is ready for trial. If not, explain why. Set forth an estimate of how long the trial will take and whether the case is jury or non-jury.

No extension of the above cutoff dates will be granted except upon written application, made prior to the cutoff date, showing good cause for the extension. Application for extensions should be made to the Magistrate Judge. Joint or unopposed requests to extend the deadlines set forth in this order need not be made by formal motion, but rather may be sought in a letter to the court. Letter requests must detail good cause for the extension and propose new deadlines.

SO ORDERED.

/s/ Jonathan W. Feldman
JONATHAN W. FELDMAN
United States Magistrate Judge

Dated: July 13, 2011
Rochester, New York

Exhibit B

Exhibit B

In the Court as set by Article 3 of the Constitution for the United States of America which court is set for:

**district court of the United States
FOR THE WESTERN DISTRICT OF NEW YORK**

Daniel J. Wik

Plaintiff,

v.

**REQUEST FOR
DOCUMENTS**

Donald R. Kunego.

CASE NO:6:11-CV-06205 CJS

Defendant:

PLEASE TAKE NOTICE that pursuant to the Federal Civil Rules, the undersigned hereby demands that you furnish me, within twenty (20) days of service of this demand with the following:

1. Copies of all records and documents associated with the defendant's qualifications for all public offices held for the years 2005 to present including but not limited to oaths, bonds, official undertakings, letters of qualification, letters of authority, approval of undertaking/surety, public insurance policies , personal insurance policy, and certificates of election/appointment.
2. Copies of all records and documents associated with all training or orientation related to any public office or work associated with an agency for the years 2005 to present.
3. Copies of all records and documents associated with the defendant's personal insurance policy that may be involved in this action, including but not limited to homeowners insurance policies, and umbrella insurance policies.

4. Copies of all records and documents regarding defendant's financial disclosures relative to any public offices held by defendant for the years 2005 to present.
5. Copies of all records and documents regarding all compensation received by defendant related to the position TOWN OF BERGEN COURT Justice, hearing officer, administrative law judge, etc from all sources including but not limited to vouches, waivers, pensions from NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, NEW YORK STATE BUREAU OF MOTOR VEHICLES, TOWN OF BERGEN, OFFICE OF COURT ADMINISTRATION, COUNTY OF GENESEE, and THE STATE OF NEW YORK.
6. Copies of all records and documents regarding all positions or titles held by defendant with the NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, NEW YORK STATE BUREAU OF MOTOR VEHICLES, THE TOWN OF BERGEN, OFFICE OF COURT ADMINISTRATION, THE COUNTY OF GENESEE, and THE STATE OF NEW YORK.
7. Copies of all town resolutions, laws, meeting minutes, etc authorizing blanket bonding THE TOWN OF BERGEN Officers including but not limited to THE TOWN OF BERGEN COURT Justices.
8. Copies of all documents and records related to Defendant for the years 2005 to present demonstrating that defendants records and docket have been examined by a public accountant and entered in the minutes of the supervising boards proceedings and the fact that they have been duly examined, and that the fines therein collected have been turned

over to the proper officials of the town as required pursuant to New York Uniform Court Justice Act 2019-a.


9. Copies of all documents or records related to Daniel Wik, Daniel J. Wik, Daniel Joseph Wik, DANIEL WIK, DANIEL J. WIK, DANIEL J WIK, and DANIEL JOSEPH WIK including but not limited to correspondence, requests, emails, telephone messages.
10. Names and address, records, reports and statements of all conversations engaged in or heard, correspondence, or any form, and communication defendant had or has knowledge of with others regarding Plaintiff.
11. Copies of all documents and records belonging to Plaintiff intercepted by the defendant.
12. Copies of all documents and records related to THE TOWN OF BERGEN COURT Case # 08060013.
13. Copies of all documents and records related to THE TOWN OF BERGEN COURT Case # 10070055.
14. This demand is continuing and includes all information, statements and documents and records obtained through the time of disposition of this action.
15. Copies of all accusatory instruments tendered for filing against Robert G. Swapceinski and Donald Kunego.

YOU ARE REQUIRED, if you do not have one or more of the above, to submit a letter or affidavit so stating within (20) days of the service of this demand.

IF YOU FAIL TO COMPLY, I shall pursue sanctions as provided by law.

Date: September 6, 2011

Daniel J. Wik



Plaintiff without representation,
In propria persona
c/o 659 Averill Avenue,
Rochester, New York [14607]
danielwik@aol.com
585-957-5902

TO:

Robert H. Flynn
LIPPMAN O'CONNOR
300 Olympic Towers
300 Pearl Street
Buffalo, NY 14202

In the Court as set by Article 3 of the Constitution for the United States of America which court is set for:

**district court of the United States
FOR THE WESTERN DISTRICT OF NEW YORK**

Daniel J. Wik

Plaintiff,

v.

PROOF OF SERVICE

Donald R. Kunego

CASE NO:6:11-cv-06205-CJS

Defendant:

PROOF OF SERVICE

I, Daniel J. Wik, hereby certify, under penalty of perjury, under the laws of the United States of America, without the "United States" (federal government), that I am at least 18 years of age, and that I personally served the following document(s):

Notice of Motion

Affirmation in support of Motion

Request for Documents

Notice of EBT

by depositing the same properly and securely enclosed in a sealed wrapper one true and correct copy of said document(s) in a post-office box regularly maintained by the United States, and under the care of the post office at Rochester, New York on the 8th of September 2011, with first class postage prepaid and properly addressed to each of the following:

Lippman O'Connor

*Wik v Kunego
Motion for Subpoenas/Enlarge*

Page 1 of 2

9/08/2011

300 Olympic Towers
300 Pearl Street
Buffalo, NY 14202
Att: Robert H. Flynn

Daniel J. Wik,

A handwritten signature in black ink, appearing to read "Daniel J. Wik". The signature is fluid and cursive, with the first name "Daniel" being more prominent than the last name "Wik".

Plaintiff without representation
in propria persona
c/o non-domestic
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Plaintiff,

v.

PROOF OF SERVICE

Donald R. Kunego

CASE NO:6:11-cv-06205-CJS

Defendant:

PROOF OF SERVICE

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Notice of Motion

Affirmation in Support of Motion to Compel/ Sanction/Extension

by depositing the same properly and securely enclosed in a sealed wrapper one true and correct copy of said document(s) in a post-office box regularly maintained by the United States, and under the care of the post office at Rochester, New York on the 24th of October 2011, with first class postage prepaid and properly addressed to each of the following:

Lippman O'Connor
300 Olympic Towers
300 Pearl Street

Buffalo, NY 14202

Att: Robert H. Flynn

Daniel J. Wik,



Plaintiff without representation
in propria persona
c/o non-domestic
659 Averill Avenue
Rochester, New York
(585)-957-5902